

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -
 UNITED STATES OF AMERICA, . Case No. 1:21-cr-86
 .
 Plaintiff, . *Status Conference*
 . *via Videoconferencing*
 - v - .
 . Tuesday, July 27, 2021
 FIRSTENERGY CORP., .
 . Cincinnati, Ohio
 .
 Defendant. . 3:30 p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE TIMOTHY S. BLACK, DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: EMILY N. GLATFELTER, ESQ.
 Assistant U.S. Attorney
 United States Attorney's Office
 221 East Fourth Street, Suite 400
 Cincinnati, Ohio 45202

For the Defendant: STEPHEN G. SOZIO, ESQ.
 Jones Day
 North Point
 901 Lakeside Avenue
 Cleveland, Ohio 44114

Also Present: Steven E. Strah, President & CEO
 Hyun Park, Esq.

Law Clerk: Cristina V. Frankian, Esq.

Court Reporter: Maryann T. Maffia, RDR
 239 Potter Stewart U.S. Courthouse
 100 East Fifth Street
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P R O C E E D I N G S

THE COURT: Good afternoon. This is United States Judge Timothy Black, the United States District Court, Southern District of Ohio, Cincinnati Division. I'm appearing by videoconference as if in the open courtroom.

We're here on the record. Ms. Maryann Maffia is serving as court reporter.

We're on the record on the criminal docket in the case of *United States of America versus FirstEnergy Corp.*, Case Number 1:21-cr-86.

My law clerk is appearing with me: Cristina Frankian.

We're here for status conference.

I'd like to begin with attorneys entering their appearances for the record.

Who appears as the attorney for the United States of America?

MS. GLATFELTER: Thank you, Your Honor. Emily Glatfelter.

THE COURT: Good afternoon, Ms. Glatfelter.

MS. GLATFELTER: Good afternoon.

THE COURT: Who appears as the attorney or the attorneys for FirstEnergy?

MR. SOZIO: Steve Sozio, Jones Day. Thank you. And with me is the general counsel, chief legal officer of FirstEnergy, Mr. Hyun Park.

1 THE COURT: Good afternoon to the two of you. I saw
2 your lips moving, but I didn't really hear you. If the
3 gentleman in the tan suit with the glorious red tie would
4 speak up?

5 MR. SOZIO: Judge, this is Steve Sozio. Can you hear
6 me now?

7 THE COURT: Good afternoon, Mr. Sozio. I can hear
8 you now. Thank you.

9 MR. SOZIO: Good afternoon, Your Honor.

10 THE COURT: Would you be willing to repeat your
11 appearances, please?

12 MR. SOZIO: Certainly, Your Honor. This is Steve
13 Sozio, S-o-z-i-o, from Jones Day, on behalf of FirstEnergy
14 Corporation; and with me is the chief legal officer of
15 FirstEnergy Corporation, Mr. Hyun Park.

16 THE COURT: Good afternoon to the two of you.

17 Mr. Sozio, could you identify for the record and for me
18 FirstEnergy's corporate representative who is appearing with
19 you on this videoconference?

20 MR. SOZIO: Yes, Your Honor. Immediately to my right
21 is Mr. Steven Strah, S-t-r-a-h, who is the Chief Executive
22 Officer of FirstEnergy Corporation.

23 THE COURT: Good afternoon, Mr. Strah.

24 MR. STRAH: Good afternoon.

25 THE COURT: We have a quorum.

1 There are a number of members of the public,
2 nonparticipants, who called in. I'd like to remind those of
3 you calling in that you must remain muted at all times, and
4 any video or audio recording of the proceedings is prohibited.

5 But I think we are prepared to proceed. And, as I
6 indicated, we're here for a status conference. The purpose of
7 this conference is very limited, and I'll get to that
8 momentarily. But first, bear with me. Let me lay out the
9 procedural posture of the case.

10 On July 22, 2021, FirstEnergy Corp. was charged in a
11 one-count Information with Conspiracy to Commit Honest
12 Services Wire Fraud.

13 Typically, this offense carries a substantial maximum term
14 of imprisonment. However, because the defendant in this case
15 is a company, the maximum possible sentence is very different.

16 I need to reflect on the record specifically that if this
17 case were tried or otherwise resolved in a conviction, the
18 statutory maximum penalties against the company would include:
19 at least one year and up to five years probation; any
20 conditions the Court imposed; a fine of up to \$500,000 or
21 twice the gross gain or loss; restitution, payment of money
22 back; forfeiture, giving up of proceeds; and a 400-dollar
23 special assessment.

24 However, in this case, the parties have entered into a
25 Deferred Prosecution Agreement, which is filed on the docket

1 at Document 3.

2 In short, defendant FirstEnergy has cooperated extensively
3 with the government to date, and FirstEnergy also admits to
4 its conduct as set forth in the attached Statement of Facts,
5 which were reviewed by first FirstEnergy's attorney and its
6 Board of Directors, including its corporate representative,
7 Mr. Strah, the CEO, who signed the Statement of Facts on
8 behalf of FirstEnergy.

9 Additionally, as set forth in the Deferred Prosecution
10 Agreement, FirstEnergy agrees to abide by certain conditions
11 over the next three years or more, including but not limited
12 to payment of a substantial fine, forfeiture, and continued
13 cooperation with the government's investigation of this and
14 other related and collateral matters.

15 In exchange, the government has agreed that, for the time
16 being, it will hold off on actively prosecuting the pending
17 case against FirstEnergy; and if FirstEnergy meets all of its
18 obligations under the Agreement, then the government will move
19 to dismiss the pending Information, i.e., the charge of
20 Conspiracy to Commit Honest Services Wire Fraud.

21 However, if at any time during the term of the Agreement
22 FirstEnergy fails to abide by the required conditions, the
23 government will proceed to prosecute this case as if it had
24 just been then filed.

25 And, of course, FirstEnergy's admissions in the Statement

1 of Facts could be used against the company.

2 We'll get into all of this in more detail momentarily,
3 but, for now, is that the gist of the Agreement from the
4 parties' perspectives?

5 First, from the government, Ms. Glatfelter?

6 MS. GLATFELTER: Yes, Your Honor.

7 THE COURT: And has the Court recited the gist of the
8 Agreement accurately from the defendant's perspective,
9 Mr. Sozio?

10 MR. SOZIO: Yes, Your Honor.

11 THE COURT: Very well. Will you keep that volume up,
12 please.

13 The Court has already entered an order tolling Speedy
14 Trial time and staying this case during the agreements, plea,
15 or term, subject to extension. Therefore, the Court, this
16 judge, will have no involvement in this case until the
17 government either moves to dismiss the charge or otherwise
18 advises that a violation has occurred and prosecution will
19 commence.

20 But today, the Court, this judge, is holding this status
21 conference for the benefit of the parties to review the
22 Deferred Prosecution Agreement on the record and memorialize
23 everyone's understanding of their respective obligations.

24 But before we get into that, however, I want to have a
25 brief conversation, under oath, with Mr. Strah on behalf of

1 FirstEnergy Corp.

2 Mr. Strah, I need you under oath so you speak the truth.
3 Will you raise your right hand for the oath to take the truth?

4 (Mr. Strah complying.)

5 THE COURT: Sir, do you solemnly swear or affirm that
6 you will answer my questions today truthfully subject to the
7 independent penalty of perjury?

8 MR. STRAH: I do, Your Honor.

9 THE COURT: Thank you. You may lower your right
10 hand. You have been sworn to tell the truth.

11 (Mr. Strah complying.)

12 THE COURT: First and foremost, Mr. Strah, because
13 you are acting on behalf of an organizational defendant, I
14 want you to confirm on the record that which I am certain.
15 You are the Chief Executive Officer of FirstEnergy Corp.; is
16 that correct, sir?

17 MR. STRAH: I am, Your Honor.

18 THE COURT: Do you carry the title of President as
19 well, or is it merely Chief Executive Officer?

20 MR. STRAH: I carry the title of President also, Your
21 Honor.

22 THE COURT: Very well. And you are authorized by a
23 valid resolution or authority of the board of FirstEnergy to
24 act on behalf of FirstEnergy in entering into the Deferred
25 Prosecution Agreement; is that right, sir?

1 MR. STRAH: Yes, Your Honor.

2 THE COURT: Very well. And FirstEnergy is, in fact,
3 able to comply with the agreed-upon conditions, including
4 payment of the fine, forfeiture, cooperation, reporting
5 requirements, and implementation of remedial measures to
6 ensure corporate compliance; is that correct, sir?

7 MR. STRAH: It is, Your Honor.

8 THE COURT: Very well. I have asked you the
9 questions I wanted to ask you to set the stage, and I
10 appreciate your responsiveness.

11 At this time, I'd like to walk through the Deferred
12 Prosecution Agreement so we're all agreed as to what presents.

13 Mr. Sozio, do you and your client have in front of you a
14 copy of the Deferred Prosecution Agreement?

15 MR. SOZIO: We do, Your Honor.

16 THE COURT: Very well. I would like you and your
17 colleague and Mr. Strah to be following along, and we will
18 proceed in that way.

19 So, at this stage, I would ask the prosecutor to please
20 state the gist of the Agreement paragraph by paragraph.

21 Ms. Glatfelter, as you're very aware, that's the gist, all
22 caps, G-I-S-T, but in the spirit of full disclosure, I may, A,
23 interrupt you or the FirstEnergy representative on occasion
24 just to ask for clarification on the record and to ensure
25 everyone is in agreement.

1 So, Ms. Glatfelter, would you state the gist of the
2 written Prosecution Agreement paragraph by paragraph.

3 MS. GLATFELTER: Yes, Your Honor. Thank you.

4 Paragraph 1 is entitled "Criminal Information and
5 Acceptance of Responsibility." There are a couple of parts to
6 this.

7 First, FirstEnergy Corporation is acknowledging and
8 agreeing that the government will file the Information, which
9 the Court has referenced earlier.

10 The second part of that, FirstEnergy is admitting,
11 accepting, and acknowledging that it is responsible under the
12 law for the acts of its current and former officers,
13 employees, and agents. It's admitting and accepting and
14 acknowledging that it is responsible under law for the acts as
15 charged in the Information and as set forth in the Statement
16 of Facts, which are attached to the Agreement as Attachment A
17 and incorporated by reference.

18 In addition, FirstEnergy Corp. is agreeing that the facts
19 alleged in the Information described in the Statement of Facts
20 are true and accurate.

21 Finally, FirstEnergy is agreeing that it will neither
22 contest the admissibility nor contradict the Statement of
23 Facts in any prosecution resulting from this Deferred
24 Prosecution Agreement, and acknowledges that this Agreement
25 nor the criminal Information is a final adjudication of the

1 matters addressed in these documents.

2 The second paragraph is -- laid out the Elements of the
3 Offense, which the Court referred to earlier, which is
4 Conspiracy to Commit Honest Services Wire Fraud.

5 Would the Court like me to review the Elements?

6 THE COURT: Yes, please. I'm going to ask Mr. Strah
7 whether FirstEnergy Corporation admits that the company
8 engaged in these elements and the conduct set forth in the
9 Statement of Facts.

10 MS. GLATFELTER: Yes, Your Honor.

11 The Elements of Conspiracy to Commit Honest Services Wire
12 Fraud are, first, that two or more persons conspired or agreed
13 to devise a scheme:

14 First, to defraud the public of its right to honest
15 services of a public official through bribery or kickbacks;
16 that included a material misrepresentation or concealment
17 of a material fact;

18 with the intent to defraud;

19 that used wire communications in interstate commerce in
20 furtherance of that scheme;

21 Second, that the defendant knowingly and voluntarily
22 joined the conspiracy to defraud;

23 Third, that the defendant intentionally participated in
24 the conspiracy to defraud;

25 And, fourth, that some or all of the acts alleged in the

1 Information occurred in the Southern District of Ohio on or
2 about the dates alleged in the Information.

3 THE COURT: Very well. Let me interrupt at this
4 stage.

5 Mr. Strah, I'm back with a question for you. You admit on
6 behalf of FirstEnergy that the company engaged in these
7 elements and the conduct set forth in the Statement of Facts;
8 is that correct?

9 MR. STRAH: Yes, Your Honor.

10 THE COURT: Very well.

11 As to Section 3, Ms. Glatfelter?

12 MS. GLATFELTER: Section 3 defines the Term of the
13 Agreement, which is three years from the date on which it was
14 fully executed and filed with the Court, except for the
15 provisions later in the Agreement that provide otherwise.

16 FirstEnergy Corp. is also agreeing or acknowledges that
17 the government, in its sole discretion, may either extend or
18 terminate the Agreement in this paragraph.

19 Paragraph 4 --

20 THE COURT: Let me interrupt while we're on the Term
21 of the Agreement. The Term of the Agreement is three years
22 from the date on which the fully-executed Agreement is filed
23 with the Court except for the ability to extend it pursuant to
24 this Agreement. Is that right, Ms. Glatfelter?

25 MS. GLATFELTER: Yes, Your Honor.

1 THE COURT: Very well.

2 Mr. Strah, you understand that the government determines
3 compliance or violations, not the Court, not the judge, not
4 FirstEnergy, correct?

5 MR. STRAH: Yes, Your Honor.

6 THE COURT: And you understand that the term of three
7 years can be extended or terminated early but only by the
8 government, correct?

9 MR. STRAH: Correct, Your Honor.

10 THE COURT: Very well.

11 As to Section 4, Ms. Glatfelter?

12 MS. GLATFELTER: Paragraph 4 lays out the Relevant
13 Considerations. It states that the government enters into
14 this Agreement based on the individual facts and circumstances
15 presented by this case, including: FirstEnergy Corp.'s
16 acceptance of responsibility; its early self-reporting in the
17 investigation of the conduct of the company and its former
18 officers, directors, employees, agents, lobbyists, and
19 consultants described more fully below; its implementation of
20 remedial measures, described more fully below; the payment of
21 a monetary penalty; and the collateral consequences of
22 prosecution, among other things.

23 THE COURT: Very well. As we proceed in light of the
24 presence of the court reporter, we'll all be certain not to
25 rush.

1 Go ahead, Ms. Glatfelter. Section 5.

2 MS. GLATFELTER: Thank you, Your Honor.

3 Paragraph 5 lays out the Defendant's Obligations under
4 this Agreement.

5 The first portion of paragraph 5 is entitled, "A.
6 Cooperation." It acknowledges that, to date, FirstEnergy
7 Corp. has provided substantial cooperation.

8 It acknowledges that this Agreement is contingent upon
9 FirstEnergy Corp.'s continued, full cooperation with the
10 United States Attorneys Office, or USAO-SDOH, in all matters
11 relating to the conduct described in this Agreement and other
12 conduct under investigation by the government, until the
13 latter of the date the Term ends or the date upon which all
14 investigation and prosecution arising out of such conduct are
15 concluded, as determined by the government.

16 There are specific types of cooperation that are outlined
17 in subparagraphs 1 through 7 on pages 3 and 4 of the
18 Agreement.

19 At the end of paragraph A, it states that: "FirstEnergy's
20 cooperation pursuant to this paragraph is subject to
21 applicable laws and regulations, as well as valid claims of
22 attorney-client privilege, settlement privilege, or attorney
23 work product doctrine; however, FirstEnergy Corp. must provide
24 to the government a log of any information or cooperation that
25 is not provided based on an assertion of law, regulation,

1 privilege, or attorney work product. FirstEnergy Corp. bears
2 the burden of establishing the validity of any such
3 assertion."

4 Importantly, this paragraph lays out that: "Failure to
5 provide full, complete, and truthful cooperation as described
6 above will constitute a violation of this Agreement. The
7 parties agree that the USAO-SDOH, in its sole discretion, will
8 determine if FirstEnergy Corp. has violated this Agreement by
9 failing to provide full, complete, and truthful cooperation."

10 THE COURT: Very well. Let me interrupt again.

11 Back to you, Mr. Strah. You understand that FirstEnergy
12 has an ongoing obligation to cooperate in this and any related
13 investigations unless and until the government is satisfied
14 that those investigations have concluded, correct?

15 MR. STRAH: Yes, Your Honor.

16 THE COURT: And, sir, have you advised FirstEnergy
17 employees that they need to cooperate if called upon?

18 MR. STRAH: Yes, Your Honor.

19 THE COURT: Very well.

20 I believe we're now on to Section B, Ms. Glatfelter.

21 MS. GLATFELTER: Thank you, Your Honor.

22 Section B outlines the Payment of a Monetary Penalty, in
23 this case a total of 230 million. That is divided into two
24 parts. The first part is a payment of 115 million to the
25 United States Treasury, and the second part is 115 million to

1 the Ohio Development Service Agency's Percentage of Income
2 Payment Plan Plus program for the benefit of Ohio
3 electric-utility customers.

4 This paragraph explains that nothing in the Agreement --
5 there is no agreement regarding a maximum penalty that could
6 be imposed in any future prosecution under this Agreement.

7 This paragraph also explains that FirstEnergy is agreeing
8 that no tax deduction may be sought in connection with the
9 payment of any part of the monetary penalty; and, importantly,
10 that FirstEnergy Corp. may not seek to recover any portion of
11 the monetary penalty from customers directly or indirectly.

12 This section is also outlining FirstEnergy Corp.'s
13 agreement that it will not --

14 I'm sorry. I lost my place, Your Honor.

15 This paragraph is also acknowledging that the USAO-SDOH is
16 agreeing that, except as provided elsewhere in this Agreement,
17 it will not bring any criminal or civil cases against
18 FirstEnergy Corp. or any of its present subsidiaries or
19 affiliates relating to any of the conduct described in the
20 attached Statement of Facts, or to conduct self-reported to
21 the Office by FirstEnergy Corp. in the investigation.

22 THE COURT: Very well.

23 MS. GLATFELTER: May I -- there's one more part, Your
24 Honor.

25 THE COURT: Yes.

1 MS. GLATFELTER: Significantly, this Agreement does
2 not provide any protection against prosecution for any future
3 conduct by FirstEnergy Corp. or any of its present or former
4 parents or subsidiaries, and it does not provide protection
5 against the prosecution of any individuals.

6 THE COURT: Very well. This criminal monetary
7 penalty, which we call a fine, totals \$230 million; correct,
8 Ms. Glatfelter?

9 MS. GLATFELTER: Yes, Your Honor.

10 THE COURT: And within 60 days of the filing of this
11 Agreement, 60 days -- within 60 days of July 22, 2021,
12 FirstEnergy Corp. shall pay 115 million to the United States
13 Treasury; and then within 60 days of the filing of this
14 Agreement, again by September 20, 2021, FirstEnergy shall pay
15 115 million to the Ohio Development Service Agency's
16 Percentage of Income Payment Plan Plus program for the benefit
17 of Ohio electric-utility customers.

18 Is that accurate, Ms. Glatfelter?

19 MS. GLATFELTER: Yes, Your Honor.

20 THE COURT: And this payment plan of the two payments
21 of \$115 million by September 20th of this year, that's the
22 payment plan for the 230 million, not in addition to the 230
23 million. Is that right, Ms. Glatfelter?

24 MS. GLATFELTER: Yes, that's correct, Your Honor.

25 THE COURT: And is that FirstEnergy's understanding,

1 Mr. Strah?

2 MR. STRAH: Yes, Your Honor.

3 THE COURT: Very well.

4 As to Section C, Forfeiture, Ms. Glatfelter?

5 MS. GLATFELTER: This paragraph outlines FirstEnergy
6 Corp.'s obligations as to forfeiture. There are two bank
7 accounts listed that belong to Partners for Progress, and the
8 listed amounts total a little bit more than \$6 million -- six
9 and a half million dollars -- and this paragraph is explaining
10 that FirstEnergy Corp. acknowledges and is not going to
11 contest the forfeiture. It acknowledges these funds are
12 subject to forfeiture and will not contest them.

13 THE COURT: Very well. And if I might interrupt?

14 Mr. Strah, you understand and agree that this \$6.4
15 million, approximately, will be forfeited because it
16 constitutes or is derived from proceeds traceable to the
17 offense, and the government may proceed with the forfeiture
18 action at any time, and this amount of money does not count
19 towards the monetary fine? Do you agree with all that which I
20 just stated, Mr. Strah?

21 MR. STRAH: Yes, Your Honor.

22 THE COURT: Very well. You understand that the
23 forfeiture is completely separate and apart from the fine,
24 that the fine is a penalty, that this 6.4 million is
25 forfeiture, and you understand that, you've told me that;

1 correct, sir?

2 MR. STRAH: Yes, Your Honor.

3 THE COURT: Very well.

4 As to Section D, Transparency in Corporate Contributions,
5 Ms. Glatfelter?

6 MS. GLATFELTER: Yes, Your Honor. This paragraph
7 outlines that within 30 days of execution of this Agreement,
8 that FirstEnergy shall publish certain information, and that
9 includes all payments, if any, made in 2021 to entities
10 incorporated under 501(c)(4), or payments made to entities
11 known to be operating for the benefit of a public official,
12 either directly or indirectly.

13 They are going to update -- according to this paragraph,
14 they'll be required to update that list on a quarterly basis
15 for the term of the Agreement.

16 THE COURT: Very well.

17 And 30 days from the execution of the Agreement is August
18 19th, 2021.

19 And, Mr. Strah, can you affirm that FirstEnergy will post
20 its first transparency report on or before that date?

21 MR. STRAH: Yes, Your Honor.

22 THE COURT: Very well.

23 We're on to Section E, Issuance of Public Statement,
24 Ms. Glatfelter.

25 MS. GLATFELTER: Thank you, Your Honor.

1 Paragraph E includes a statement that says: "Central to
2 FirstEnergy Corp.'s effort to influence the legislative
3 process in Ohio was the use of 501(c)(4) corporate entities.
4 FirstEnergy Corp. used the 501(c)(4) corporate form as a
5 mechanism to conceal payments for the benefit of public
6 officials and in return for official action.

7 "FirstEnergy Corp. used 501(c)(4) entities in this way
8 because the law does not require disclosure of donors to a
9 501(c)(4), and there is no ceiling that limits the amount of
10 expenditures that can be made to a 501(c)(4) entity, for the
11 purpose of influencing the legislative process.

12 "This effort would not have been possible, both in the
13 nature and volume of money provided, without the use of a
14 501(c)(4) entity."

15 FirstEnergy is required to post this statement on its
16 website, and I understand that that has already been done.

17 THE COURT: Very well.

18 And, Mr. Strah, you acknowledge this statement as true,
19 and can you affirm that it's already been posted on
20 FirstEnergy's website?

21 MR. STRAH: Yes, Your Honor, I can affirm the
22 statement is true, and it has been posted on our website.

23 THE COURT: Thank you, sir. Fully responsive.

24 Section F, Ms. Glatfelter?

25 MS. GLATFELTER: Section F outlines the remediation

1 that FirstEnergy Corp. has taken and will continue to take and
2 the minimum requirements required for the implementation of
3 additional corporate compliance program elements. I
4 understand that FirstEnergy Corp. is in the process of doing
5 so. This paragraph also discusses reporting obligations. The
6 minimum requirements for the compliance program are contained
7 in Attachment B to this Agreement.

8 THE COURT: Very well.

9 Mr. Strah, Attachment B is the minimum the corporate
10 company must adhere to but may need to modify and enhance
11 procedures if necessary to ensure compliance with the law.
12 You acknowledge that, sir; is that right?

13 MR. STRAH: Yes, Your Honor.

14 THE COURT: Very well.

15 I think we're to Section G, Ms. Glatfelter.

16 MS. GLATFELTER: Yes.

17 Section G addresses Public Statements by the Company
18 regarding this Agreement or about the Statement of Facts, so
19 there are a couple of salient portions to this section.

20 The first is that the company is agreeing to consult the
21 government regarding press releases or press conferences about
22 this Deferred Prosecution Agreement, which they have done and
23 I understand they'll continue to do.

24 The second part is that the company is acknowledging that
25 it will not make any public statements, in litigation or

1 otherwise, that contradicts its acceptance of responsibility
2 and the facts described in the Statement of Facts. If it were
3 to do so, this paragraph outlines -- or, I'm sorry. This
4 section outlines how that would be handled. And,
5 significantly, it's the USAO-SDOH, my office, which determines
6 whether there is such a violation or statement that
7 contradicts the Statement of Facts.

8 THE COURT: Very well.

9 Mr. Strah, have all current FirstEnergy employees and
10 board members been advised that any press release or press
11 conferences need to be run by the government first to ensure
12 compliance with this Agreement?

13 MR. STRAH: Yes, Your Honor.

14 THE COURT: Very well. Thank you.

15 As to section H, Ms. Glatfelter?

16 MS. GLATFELTER: Section H basically addresses any
17 Changes in Corporate Form or applying for bankruptcy
18 protection.

19 Under this section, FirstEnergy Corp. is obligated to make
20 this Agreement applicable to new corporate forms, new changes,
21 sales, mergers, transfers, and also provide notice to the
22 government.

23 THE COURT: Very well. And as to Section 6?

24 MS. GLATFELTER: Section 6 I know is important to
25 FirstEnergy Corp. These are the obligations of my office on

1 behalf of -- under this Deferred Prosecution Agreement.

2 So it says: "In consideration of FirstEnergy Corp.'s past
3 and future cooperation as described above; FirstEnergy Corp.'s
4 payment of a monetary penalty; First Corp.'s adoption and
5 maintenance of remedial measures, and review and audit of such
6 measures, including the compliance undertakings as described
7 in Attachment B; and other obligations specified in this
8 Agreement, my office agrees to request that the District Court
9 for the Southern District of Ohio defer proceedings on the
10 charge in the Information pursuant to Title 18, United States
11 Code Section 3161(h)(2) for the Term of this Agreement."

12 The next paragraph outlines what happens with full
13 compliance.

14 If FirstEnergy Corp. fully complies with all of its
15 obligations under this Agreement, the government will not
16 continue the criminal prosecution of the company described in
17 paragraph 1, and within 30 days of the successful completion
18 of the Term, which is described earlier in the Agreement,
19 FirstEnergy's obligations pursuant to paragraph 5(B), which is
20 the fine, (C), which is the forfeiture, (E), which is the
21 issuance of the 501(c)(4) public statement, and (F), the
22 Compliance Program and Reporting, will end.

23 FirstEnergy's remaining obligations under paragraph 5 such
24 as cooperation and not making contradictory statements will
25 continue until the completion of any investigation, criminal

1 prosecution, or civil proceedings brought by this Office
2 related to the conduct set forth in the Statement of Facts.

3 Within 30 days of the completion of those proceedings, we
4 will seek dismissal of the Information filed against the
5 company.

6 I think significant to the company as well is the last
7 paragraph of this section. My office is agreeing, if
8 requested to do so, to bring to the attention of governmental
9 and other authorities the facts and circumstances relating to
10 the nature of the conduct underlying this Agreement, and the
11 nature and quality of FirstEnergy's cooperation and
12 remediation.

13 By agreeing to provide this information, if requested to
14 do so, my office is not agreeing to advocate on behalf of
15 FirstEnergy Corp., but rather is agreeing to provide the facts
16 to be evaluated independently by other authorities.

17 THE COURT: Very well. Seven?

18 MS. GLATFELTER: Paragraph 7 lays out the procedures
19 and some information about Violation of the Agreement. I
20 think, first and foremost, any violation of the Agreement is
21 determined by my office. This section outlines how this
22 determination is made; the statute of limitations that will
23 apply; how the government will provide written notice to the
24 company; and the admissibility of statements like the
25 Statement of Facts and statements made by the company will be

1 used in future prosecution.

2 THE COURT: Very well. Ms. Glatfelter, as to the
3 statute of limitations, statute of limitations that occurs
4 during the term will be tolled from the date upon which the
5 violation occurs until the earlier of the date upon which the
6 government is made aware of the violation or the duration of
7 the term, three years plus five years, is that accurate?

8 MS. GLATFELTER: Yes. And the plus five years would
9 apply if we are not aware of the violation during the course
10 of the Agreement but find out about it later.

11 THE COURT: Very well. Then as to Section C, Written
12 Notice?

13 MS. GLATFELTER: Yes.

14 Excuse me, Your Honor.

15 The government is agreeing in this paragraph to provide
16 the company with written notice of any violations or breaches
17 and that it's explaining that FirstEnergy will have an
18 opportunity to respond in writing to explain the circumstances
19 of the breach and basically have a dialogue before we take
20 action.

21 THE COURT: Very well. And as to Section D?

22 MS. GLATFELTER: It's explaining that all statements
23 made by FirstEnergy Corp. or its affiliates or subsidiaries
24 to the government or to the Court, including the Statement of
25 Facts, whether it's in other testimony given before a grand

1 jury, a court, legislative hearings, any evidence derived from
2 those statements, shall be admissible in any criminal
3 proceeding. It explains that FirstEnergy Corp. will not
4 contest the admissibility of these statements as well.

5 THE COURT: And, Mr. Strah, FirstEnergy Corp.
6 understands this portion of the Agreement and will be bound by
7 it, correct?

8 MR. STRAH: Yes, Your Honor.

9 THE COURT: Very well.

10 As to Section 8?

11 MS. GLATFELTER: Section 8 --

12 I'm sorry, Your Honor. I didn't mean to interrupt.

13 Section 8 is the Limitations of the Agreement. It
14 explains that this Agreement is binding on the company and my
15 office, which is the Southern District of Ohio. It doesn't
16 bind any other components of DOJ, federal agencies, state or
17 local law enforcement or regulatory agencies. However, we
18 will bring to the attention of other authorities the
19 cooperation of FirstEnergy, if asked.

20 THE COURT: Very well. And Section 9, Notice?

21 MS. GLATFELTER: Yes. Section 9 just lays out who
22 specific -- who notice should specifically be delivered to and
23 the case of delivering notice to my office or delivering
24 notice to FirstEnergy Corp.

25 THE COURT: Very well. And, finally, Section 10?

1 MS. GLATFELTER: Section 10 is entitled "Entire
2 Agreement." This explains that this Agreement, along with any
3 attachments, is the complete agreement between the parties.
4 It supercedes all other promises, representations,
5 understandings, and agreements between the parties. No
6 amendments, modifications, or additions to this agreement
7 shall be valid unless they are in writing and signed by the
8 government, the attorneys for FirstEnergy Corp., and a duly
9 authorized representative of FirstEnergy Corp.

10 THE COURT: Very well.

11 And, Mr. Strah, you agree that this is the entire
12 Agreement, and any promises that have been made to the company,
13 they're all written down here; is that right, sir?

14 MR. STRAH: Yes, Your Honor.

15 THE COURT: Very well.

16 There's a Corporate Officer's Certificate, and this
17 Agreement is signed by whom and when, Ms. Glatfelter?

18 MS. GLATFELTER: It's signed by Mr. Strah, who is
19 present today, and it was signed on July 20th, 2021.

20 THE COURT: Very well. Thank you.

21 We've gone through the gist of the written Deferred
22 Prosecution Agreement.

23 There is also a Statement of Facts attached to the
24 Agreement. It's signed by Mr. Strah on behalf of FirstEnergy
25 and also by Mr. Sozio as the company's attorney.

1 The Statement of Facts is very lengthy, and I do not
2 believe it needs to be read, in whole or in part, unless the
3 government wishes to do so.

4 But, Ms. Glatfelter, I'm going to ask Mr. Strah to confirm
5 the accuracy of the Statement of Facts.

6 So, Ms. Glatfelter, do you agree that we can avoid reading
7 or summarizing the Statement of Facts?

8 MS. GLATFELTER: Well, I was hoping to read it, Your
9 Honor.

10 And I'm just kidding.

11 We'll waive the reading of the Statement of Facts. Thank
12 you.

13 THE COURT: Ms. Glatfelter, I enjoy seeing you smile.
14 It's a credit to you.

15 Mr. Strah, did you read the Statement of Facts carefully
16 in its entirety more than once and review it carefully with
17 the attorneys for FirstEnergy before you signed it?

18 MR. STRAH: Yes, Your Honor.

19 THE COURT: Everything that's written down here, is
20 it correct?

21 MR. STRAH: Yes, Your Honor.

22 THE COURT: Is it in any way incorrect, to your
23 knowledge?

24 MR. STRAH: Not to my knowledge, Your Honor.

25 THE COURT: So, on behalf of FirstEnergy, you admit

1 to everything in this Statement of Facts; is that right?

2 MR. STRAH: Yes, Your Honor.

3 THE COURT: Very well.

4 Well, with that, I believe we've done what we needed to do
5 today. And, as I said, the case is stayed, it's on hold, and
6 time is tolled, it's not running. So the Court, this judge,
7 will simply wait to hear from the government, ideally upon
8 successful termination of the Agreement, at which time the
9 Court, this judge, will grant a Motion to Dismiss.

10 So, with that, is there anything else from either side
11 that we need to address today before we adjourn and end the
12 hearing?

13 Is there anything more from the government today?

14 MS. GLATFELTER: No, Your Honor. Thank you.

15 THE COURT: Very well.

16 Is there anything more from the defense, Mr. Sozio?

17 MR. SOZIO: No, Your Honor. Thank you for your time,
18 and thanks to the government for their time and attention as
19 well.

20 THE COURT: Very well. Thank you, sir.

21 And to all of you who are appearing, thank you for
22 appearing timely and for your professional approach.

23 We have concluded what we can do today. I want you to
24 stay safe and do well. I'm going to end the hearing by
25 adjourning now simply by saying good-bye.

1 Thank you, and good-bye. We are adjourned.

2 (The proceedings concluded at 4:07 p.m.)

3
4 C E R T I F I C A T E

5
6 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
7 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

8
9 s/_____

10 Maryann T. Maffia, RDR
11 Official Court Reporter
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